

REMARKS/ARGUMENTS

Claims 15, 27, 42 and 53 are now pending in this application. Claims 15 and 42 are independent claims. Claims 15 and 42 have been amended without prejudice. Claims 1-14, 16-26, 28-41, 43-52 and 54 have been cancelled without prejudice.

Drawings

The drawings were objected to under 37 CFR 1.83(a). (Office Action, Pages 2-3). Claims 2, 3, 5-12, 14, 16-18, 20-26, 28, 30-39, 41, 43-52 and 54 have been cancelled, thereby obviating the objections under this section.

Claim Rejections – 35 USC § 112

Claims 2, 3, 5-12, 14, 16-18, 20-26, 28, 30-39, 41, 43-52 and 54 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement, and were further rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. (Office Action, Pages 3-5). Claims 2, 3, 5-12, 14, 16-18, 20-26, 28, 30-39, 41, 43-52 and 54 have been cancelled, thereby obviating the rejections under this section.

Claim Rejections – 35 USC § 103

Claims 1, 4, 13, 15, 19, 27, 29, 40, 42 and 53 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chen, United States Patent Number: 6,431,428 (hereinafter: Chen) in view of Hou, United States Patent Number: 5,653,371 (hereinafter: Hou). Applicants respectfully traverse these rejections.

“To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” (emphasis added) (MPEP § 2143). “If an

independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is non-obvious.” *In re Fine*, 837 F. 2d 1071, 5USPQ2d 1596 (emphasis added) (Fed. Cir. 1988). Applicants respectfully submit that independent Claims 15 and 42 include elements that have not been disclosed, taught or suggested by Chen or Hou, either alone or in combination.

Independent claims 15 and 42 of the present invention each generally recite an adjustable angle magazine having a cover removably coupled with the adjustable angle magazine for providing protection to the adjustable angle magazine, the cover including a side loading mechanism disposed on the side of the cover for enabling loading of nails through a side of the cover and into the adjustable angle magazine. The Patent Office has acknowledged that the Chen does not teach a side loading mechanism disposed on the side of the cover, as claimed in the present invention. (Office Action, Page 6). However, the Patent Office cites Hou as teaching the above-referenced elements of the present invention. (Office Action, Page 7). Hou teaches a magazine (4) having a side nail loading port (412) formed therein. (Hou, FIG. 5 and Column 2, Lines 25-43). However, Hou does not teach that the magazine includes a removable cover for providing protection to the adjustable angle magazine, as claimed in the present invention. Further, Hou does not teach that a side loading mechanism is disposed on a side of the removable cover for enabling loading of nails through a side of the cover and into the magazine, as claimed in the present invention. Additionally, it would not have been obvious to modify Hou to include the above-referenced elements because the magazine of Hou is formed to include two side plates (41 and 42). (Hou, Column 2, Lines 25-27). One of ordinary skill in the art would not have been motivated to include a separate cover for a magazine that was already formed with side plates. Further, one of ordinary skill in the art would not have been motivated to modify the side plates of Hou to make them serve as a removable cover because the side plates are designed with grooves (413 and 422) for receiving the nail heads of a bar of nails. (Hou, Column 2, Lines 43-45). Given Hou's design, if one or both of the side plates of Hou were removed, the magazine of the nail gun would likely not be able to function.

Based on the rationale above, Applicants contend that none of the references cited

by the Patent Office against the present invention, either alone or in combination, discloses, teaches or suggests an adjustable angle magazine having a cover removably coupled with the adjustable angle magazine for providing protection to the adjustable angle magazine, the cover including a side loading mechanism disposed on the side of the cover for enabling loading of nails through a side of the cover and into the adjustable angle magazine, as claimed in Claims 15 and 42 of the present invention and therefore, the above-cited references do not preclude patentability of the present invention under 35 U.S.C. § 103(a). Applicants further contend that it would not have been obvious to one of ordinary skill in the art at the time of the present invention to provide the above-referenced elements, as claimed in the present invention. As a result, a *prima facie* case of obviousness has not been established for independent Claims 15 and 42. Thus, independent Claims 15 and 42 are believed allowable. Further, Claim 27 (which depends from claim 15) and Claim 53 (which depends from claim 42) are therefore allowable.

CONCLUSION

In light of the forgoing, reconsideration and allowance of the pending claims is earnestly solicited.

Respectfully submitted on behalf of
Porter-Cable Corporation,

By: 

Jeffrey M. Andersen

Reg. No. 52,558

Dated: September 15, 2005

Jeffrey M. Andersen
SUITER • WEST • SWANTZ PC LLO
14301 FNB Parkway, Suite 220
Omaha, NE 68154
(402) 496-0300 telephone
(402) 496-0333 facsimile